

**United States Department of Labor
Employees' Compensation Appeals Board**

C.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Stockton, CA, Employer)

**Docket No. 07-1837
Issued: December 6, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 2, 2007 appellant filed a timely appeal of the April 25, 2007 merit decision of the Office of Workers' Compensation Programs, which found that he received an overpayment of benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant received an overpayment in the amount of \$2,436.99 for the period June 4 to July 1, 2001; and (2) whether appellant was at fault in accepting the overpayment, and therefore, not entitled to a waiver of recovery.

FACTUAL HISTORY

Appellant, a 62-year-old distribution clerk, injured his right shoulder on December 2, 2000 when he tripped and fell at work. The Office initially accepted his claim for right shoulder strain and contusion. However, subsequent examinations revealed a dislocation of the right acromioclavicular (AC) joint and a torn rotator cuff. On March 30, 2001 appellant underwent

surgery to repair his right rotator cuff.¹ The Office accepted the rotator cuff injury and March 30, 2001 surgery as employment related. On May 25, 2001 the Office disbursed payment in the amount of \$4,323.63 for temporary total disability covering the period April 9 to May 25, 2001.

In a letter dated July 12, 2001, the Office advised appellant that he would be paid wage-loss compensation through July 1, 2001 based on his physician's representation that he was expected to return to restricted duty by July 2, 2001. A check in the amount of \$3,016.85 was disbursed July 20, 2001. The payment covered the period May 26 to July 1, 2001 and was accompanied by a benefit statement describing the various rights and responsibilities associated with the receipt of benefits.

On July 23, 2001 the employing establishment advised the Office that appellant had returned to work. According to the employing establishment, appellant worked June 4 to 7, 2001, used a combination of annual and sick leave from June 8 to 29, 2001, and resumed work thereafter. The employing establishment noted that appellant had received wage-loss compensation from the Office for the same time period. Copies of appellant's earnings and leave statements were provided.

The Office calculated the amount of wage-loss compensation appellant was entitled to receive for the period May 26 to June 3, 2001, and declared the monies paid for June 4 to July 1, 2001 an overpayment of benefits. On August 9, 2001 the Office advised appellant of its preliminary determination that he received an overpayment of benefits in the amount of \$2,436.99 for the period June 4 to July 1, 2001. The Office also informed appellant that he was considered to be at fault in accepting the overpayment. Appellant did not respond to the preliminary determination, and the Office took no further action for almost six years.

On April 25, 2007 the Office issued a final decision finding that appellant was overpaid \$2,436.99 and was at fault in creating this overpayment.

LEGAL PRECEDENT -- ISSUE 1

If an employee returns to work and has earnings or is in a paid leave status, he is not entitled to receive wage-loss compensation for temporary total disability for the same time period.²

ANALYSIS -- ISSUE 1

Appellant worked from June 4 to 7, 2001, was in a paid leave status from June 8 to 29, 2001, and returned to work June 30, 2001. The employing establishment provided earnings and leave statements verifying that appellant received his regular wages for the above-referenced period. On July 20, 2001 the Office paid appellant wage-loss compensation in the amount of \$3,016.85 for temporary total disability from May 26 to July 1, 2001. Because appellant either

¹ At the time, appellant's surgeon anticipated a return to work by July 2001.

² See 20 C.F.R. § 10.401 (2007).

worked or was in a paid leave status from June 4 to July 1, 2001, he was not entitled to receive wage-loss compensation for this period. The record indicates that the Office paid appellant \$2,436.99 in wage-loss compensation that he was not entitled to receive. Accordingly, the Office properly declared an overpayment of \$2,436.99 for the period June 4 to July 1, 2001.

LEGAL PRECEDENT -- ISSUE 2

An overpayment must be recovered unless “incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the [Federal Employees’ Compensation] Act or would be against equity and good conscience.”³ An individual who is found at fault in either accepting or creating an overpayment is not eligible for a waiver of recovery of overpayment.⁴ A benefits recipient will be found at fault if the individual accepted a payment which he knew or should have known to be incorrect.⁵ Each recipient is responsible for taking all reasonable measures to ensure that payments he receives from the Office are proper.⁶

ANALYSIS -- ISSUE 2

Appellant is at fault with respect to the \$2,436.99 overpayment because he accepted the July 20, 2001 payment when he knew or should have known the amount was incorrect. The accompanying benefit statement was sufficient to place appellant on notice that he was not entitled to compensation for total disability following his return to work. The statement advised appellant that in order to avoid an overpayment, he should immediately inform the Office when he returned to either full-time or part-time work. The statement further advised appellant to “return ... any compensation checks received after you go back to work” Appellant had resumed work several weeks prior to receiving the July 20, 2001 check and, therefore, based on the accompanying instructions he should have know not to accept this latest payment from the Office. The record establishes that appellant accepted a payment he knew or should have known to be incorrect.⁷ Therefore, the Board finds that he was at fault with respect to the \$2,436.99 overpayment. Because he is at fault, appellant is not entitled to a waiver of recovery of the overpayment.

CONCLUSION

Appellant received an overpayment in the amount of \$2,436.99 and was at fault in accepting the overpayment.

³ 5 U.S.C. § 8129(b) (2000).

⁴ 20 C.F.R. § 10.433(a).

⁵ 20 C.F.R. § 10.433(a)(3).

⁶ 20 C.F.R. § 10.433(a).

⁷ 20 C.F.R. § 10.433(a)(3).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board